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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/560,834

02/28/2007

Johann Manner

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04/19/2011

LOWE HAUPTMAN HAM & BERNER, LLP

1700 DIAGONAL ROAD

SUITE 300

ALEXANDRIA, VA 22314

EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1798

MAIL DATE

DELIVERY MODE

04/19/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/560,834	MANNER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cheryl Juska	1798	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-8, 10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8, 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Response to Amendment**

1. Applicant's amendment filed February 16, 2011, has been entered. Claim 1 has been amended as requested. Claims 5, 9, and 11 are cancelled. Thus, the pending claims are 1-4, 6-8, 10, and 12, with claim 12 being withdrawn as non-elected.
2. Said amendment is sufficient to withdraw the 112, 2<sup>nd</sup> rejection set forth in sections 4 and 5 of the last Office Action (Non-Final Rejection mailed 11/30/2010). Additionally, said amendment is sufficient to overcome the 103 rejection set forth in section 7 of the last Office Action. Specifically, applicant has amended claim 1 to positively recite the process step of dry-wet spinning.

### **Claim Rejections - 35 USC § 112**

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 6, 7, and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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5. Claims 6, 7, and 10 are rejected as indefinite for failing to further limit the subject matter of a previous claim. Said claims narrow the titer range of parent claim 1 from 6.5-25 dtex, 12-25 dtex, and 15-25 dtex, respectively. However, claim 1 was recently amended to change the titer range from 6-25 dtex to 6-15 dtex. As such, claims 6, 7, and 10 are indefinite for claiming a broader titer range than that recited in the parent claim.

### **Claim Rejections - 35 USC § 103**

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1-4, 6-8, and 10 are rejected under 35 U.S.C. 103(a) as obvious over US 4,246,221 issued to McCorsley.

McCorsley discloses lyocell fibers produced by said dry-wet spinning process, wherein said fibers are suitable for making cellulosic fabrics having properties similar to cotton (abstract, col. 1, lines 15-43, and col. 2, lines 35-65). Working samples A-H have a denier per filament ranging from 5.3-48.7 denier (5.9-54.1 dtex). The spun filaments may be cut into staple length fibers (col. 12, lines 15-22). The fibers are useful in making washable fabrics since they do not lose their shape during washing and fabrics made into draperies, etc. since they do not elongate more at high humidity than at low humidity (col. 12, lines 22-26).

Thus, McCorsley teaches the invention of claims 1-4, 6-8, and 10 with the exception of (a) the fibers are made into carpets or textile flooring materials and (b) the claimed V ratio.

Regarding the former exception, while McCorsley fails to explicitly teach the claimed flooring

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applications, the claims are deemed obvious over the prior art. First, the terms “carpet” and “textile flooring materials” do not necessarily impart any structural features to the textile material, but rather, said terms are descriptive of the intended use of the textile. As such, in theory, any fabric is capable of being employed as a textile flooring material. Hence, said limitation does not distinguish the present invention from the prior art. Secondly, even if some structural features are read into the terms “carpet” and “textile flooring materials,” it would have been readily obvious to a skilled artisan to employ the lyocell fibers of McCorsley in flooring applications in order to expand the number of uses thereof.

Regarding the latter exception, although the reference does not explicitly teach the V ratio property, it would have been obvious to a skilled artisan to modify the titer and/or fiber morphology (i.e., crystallinity) via the drawing process in order to obtain an increase in tenacity and elongation at break. The relationships between the properties of tenacity and elongation with the structural features of titer and morphology are well known in the fiber art. Such modifications would have yielded predictable results to the skilled artisan. Thus, claims 1-4, 6-8, and 10 are rejected as being obvious over the cited prior art.

### **Response to Arguments**

8. Applicant’s arguments filed with the amendment have been fully considered but they are not persuasive.

9. Applicant argues the present claims are patentably distinct from the McCorsley invention based upon the data given in Table VI of the reference (Amendment, paragraph spanning pages

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4-5). From said data, applicant calculates the ratio V property for McCorsley's exemplary fibers A-H (Amendment, page 5, Table). The calculated ratio V properties, for fibers within the range of 6-15 dtex, are greater than 2.2, which is outside of the range presently claimed. In view of this data, the previous 102/103 rejection set forth in section 10 of the last Office Action has been withdrawn in favor of the above 103 rejection.

10. Specifically, the claims ratio V would have been obvious over the prior art since it would have been obvious to a skilled artisan to manipulate the process conditions in order to improve the fiber strength and elongation. Absent a showing of criticality by the applicant for the claimed titer range, the present claims are obvious over McCorsley. It is well settled that where patentability is predicated upon a change in a condition of a prior art composition, such as change in size, concentration or the like, the burden is on the applicant to establish with objective evidence that the change is critical, i.e., it leads to a new, unexpected result. In re Woodruff, 16 USPQ2d 1934; In re Aller, 105 USPQ 233. In the present case, applicant has not attached any criticality to the claimed titer range of 6-15 dtex and the disclosed preference for the previously claimed range of 6-25 dtex would seem to allay any suggestion of criticality. Therefore, applicant's arguments are found unpersuasive and the above rejection stands.

11. In response to applicant's argument that McCorsley fails to teach the use of the lyocell fibers in carpets and textile flooring materials (Amendment, page 5, 2<sup>nd</sup> paragraph – page 6, 1<sup>st</sup> paragraph), it is argued that the terms "carpets" and "textile flooring materials" do not limit the structure of the textile, but rather are descriptive of the intended use thereof. The fibers of McCorsley are capable of use as carpeting or flooring materials. Thus, applicant's argument is found unpersuasive.

### Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner can be emailed at [cheryl.juska@uspto.gov](mailto:cheryl.juska@uspto.gov) or the examiner's supervisor, Angela Ortiz can be reached at 571-272-1206. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/*  
Primary Examiner  
Art Unit 1798

cj  
April 15, 2011